

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

KRISTINE BOSLEY,)	
)	
Plaintiff,)	CIVIL NO. 4-96-CV-20267
)	
v.)	
)	
EXCEL CORPORATION,)	
)	
a Delaware Corporation,)	
d/b/a MBPXL Corporation,)	
d/b/a Cargill Processed Meat)	
Products,)	FINAL JURY INSTRUCTIONS
)	
Defendant.)	

TABLE OF CONTENTS

1. Introduction
2. Agency
3. Claim for Sexual Harassment as the Result of a Hostile Work Environment
4. Reasonably Foreseeable Result
5. Claim for Sexual Discrimination by Disparate Treatment
6. Business Judgment
7. Same Decision
8. Damages
9. Punitive Damages
10. Nominal Damages
11. Quotient Verdict
12. Jurors' Duties
13. Duty to Deliberate

INSTRUCTION NO. _____

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together, because no one instruction includes all of the applicable law. Remember to review the preliminary instructions in addition to these instructions. You must not single out some instructions and ignore others, because all are important. This is true even though those instructions I gave you at the beginning of or during the trial are not repeated here.

Bosley's claim that Excel retaliated against her as the result of her complaints about the alleged sexual harassment to which she was subjected is no longer before you and need not be decided by you.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices, or emotions.

INSTRUCTION NO. ____

A corporation acts only through its management level employees, and any management level employee of a corporation may bind the corporation by acts and statements made while acting within the scope of his or her duties as an employee of the corporation.

To determine what Excel knew or should have known, you shall consider something known by a management level employee to be known by the corporation. Likewise, you shall consider actions, statements, and decisions by Excel's management level employees to be Excel's actions, statements, and decisions.

INSTRUCTION NO. _____

Your verdict must be for Bosley and against Excel on Bosley's claim of sexual harassment as the result of a hostile work environment, if Bosley has proved all of the following propositions by a preponderance of the evidence:

1. *Bosley was subjected to unwelcome harassment.*

The conduct must be "unwelcome" in the sense that it was uninvited and offensive.

2. *The conduct was based on sex.*

The type of conduct that may constitute sexual harassment includes sexual advances, requests for sexual favors, sexual innuendo, and sexually derogatory language. Conduct that is not sexual in nature, including discriminatory intimidation, ridicule, and insult, may also be sexual harassment, if the plaintiff would not have been subjected to the conduct but for the fact that she is female.

3. *The harassment was sufficiently severe or pervasive that Bosley and a reasonable person under similar circumstances would find it created a hostile or abusive work environment.*

Whether an environment is hostile or abusive cannot be determined by a mathematically precise test; it entails considerations of all of the circumstances. Factors to consider may include the frequency of the harassing conduct; its severity; whether it is physically threatening or

humiliating, or a mere offensive utterance; and whether it unreasonably interfered with the employee's work performance.

4. *The harassment would affect a term, condition, or privilege of a reasonable person's employment.*

An abusive work environment may exist where the harassment caused economic injury, affected the employee's psychological well-being, detracted from job performance, discouraged the employee from remaining on the job, or kept the employee from advancing in her career.

5. *Excel's management level employees knew or should have known of the harassment.*

6. *Excel's management level employees failed to take prompt and appropriate corrective action.*

Proper corrective or remedial action is action that is reasonably calculated to end the harassment. As a defense to this claim, Excel asserts that it took proper remedial action. If you find that Excel took proper remedial action, then Bosley cannot establish this element of this claim, and your verdict on this claim must be for Excel.

If Bosley has failed to prove any of the above six numbered propositions above by a preponderance of the evidence, your verdict must be for Excel on this claim. If you find Bosley has proved all six

numbered elements by the preponderance of the evidence, you should find for Bosley on this claim, and consider her damages claim.

INSTRUCTION NO. _____

If you find in favor of Bosley on her claim of sexual harassment as the result of a hostile work environment, you must answer the question on the verdict form concerning whether Excel's failure to take proper corrective action to remedy the sexual harassment by Bosley's co-worker caused Bosley's discharge.

To prove that Excel's failure to take proper remedial action resulted in her discharge, Bosley must prove by the preponderance of the evidence that she would not have violated Excel's rule against striking another employee but for Excel's failure to take proper remedial action in response to the sexual harassment, and that a reasonable person would find Bosley's actions in violating this rule on May 13, 1994, were a reasonably foreseeable result of Excel's failure to take proper remedial action to remedy the sexual harassment.

INSTRUCTION NO. _____

Bosley claims that Excel intentionally discriminated against her, in that her sex was a motivating factor in the decision to discharge her. This is her claim of disparate treatment.

Your verdict must be for Bosley and against Excel on this claim, if Bosley has proved all of the following propositions by a preponderance of the evidence:

1. *Excel discharged Bosley; and*

2. *Bosley's sex was a motivating factor in Excel's decision to discharge her.* The term "motivating factor" means a consideration that moved Excel toward its decision. More than one motivating factor may affect a decision. You may find that Bosley's sex was a motivating factor in Excel's decision if it has been proved by the preponderance of the evidence that Excel's stated reasons for its decision are not the true reasons, but are a pretext to hide its discriminatory motivation.

Bosley must show that Excel intentionally discriminated against her. Bosley, however, is not required to produce direct evidence of intentional discrimination. Intentional discrimination may be inferred from the existence of other facts.

If Bosley has failed to prove either of the two numbered elements above by the preponderance of the evidence, your verdict must be for Excel on this claim. If you find Bosley has proved both of the two numbered elements by the preponderance of the evidence, you should find for Bosley on this claim, and consider her damages claim.

INSTRUCTION NO. _____

You may not return a verdict for Bosley just because you might disagree with Excel's decisions or believe them to be harsh.

INSTRUCTION NO. _____

If you find in favor of Bosley on her claim for sexual discrimination through disparate treatment, then you must answer the following question on the verdict form: Has Excel proved by the preponderance of the evidence that Excel would have discharged Bosley regardless of her sex?

INSTRUCTION NO. _____

If you find in Bosley's favor as explained in these instructions, then you must award her such sum as you find by the preponderance of the evidence will fairly and justly compensate her for any damages you find she sustained as a direct result of Excel's wrongful conduct. Bosley's damages claim includes three distinct types of damages, and you must consider them separately.

Emotional Distress. You must determine the amount of damages sustained by Bosley for emotional distress. Damages for emotional distress include damages for emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life. Bosley does not need to introduce evidence of the monetary value of such damages elements. The amount you assess for these elements cannot be measured by any exact or mathematical standard. You must use your sound judgment based on an impartial consideration of the evidence.

When considering the amount of monetary damages to which Bosley may be entitled for emotional distress, you should consider the nature, character, and seriousness of the emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life that Bosley felt. You must also consider the extent or duration, as any award you make must cover the damages Bosley endured since the wrongdoing to the present time.

You may also award Bosley damages for future emotional distress, if you find that the evidence presented justifies the conclusion that Bosley's emotional distress and its consequences can reasonably be expected to continue in the future.

Backpay. If you find that Excel is responsible for Bosley's discharge under these instructions, you must determine the amount of any wages and fringe benefits Bosley would have earned in her employment with Excel if she had not been discharged, from the date of her suspension, May 13, 1994, through the date of your verdict, minus

the amount of earnings and benefits that Bosley actually received from other employment during that time. Such an award is sometimes called "backpay" or "lost wages."

Frontpay. If you find that Excel is responsible for Bosley's discharge, you must determine the amount of any future wages and fringe benefits that Bosley would reasonably have earned in her employment from the date of your verdict until the time you find Bosley would have voluntarily left Excel's employment; or until the time she should reasonably be able to obtain employment with pay and responsibilities equivalent to the pay and responsibilities that Bosley had as an Excel employee, minus the amount of earnings and benefits that Bosley will receive from other employment during that time. Such an award is sometimes called "frontpay" or "future lost wages."

Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

You are also instructed that Bosley has a duty under the law to "mitigate" her damages -- that is, to exercise reasonable diligence under the circumstances to minimize her damages. Therefore, if you find by the preponderance of the evidence that Bosley failed to seek out or take advantage of an opportunity that was reasonably available to her, you must reduce her damages by the amount she reasonably could have avoided if she had sought out or taken advantage of such an opportunity.

In determining the amount of any damages that you decide to award, you should be guided by dispassionate common sense. You must use sound discretion in fixing an award of damages, drawing reasonable inferences from the facts in evidence. You may not award damages based on sympathy, speculation, or guess work. On the other hand, the law does not require that Bosley prove the amount of her losses with mathematical precision, but only with as much definiteness and accuracy as circumstances permit.

INSTRUCTION NO. _____

In addition to the damages mentioned in the other instructions, the law permits the jury, under certain circumstances, to assess punitive damages against a defendant to punish the defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

If you find in Bosley's favor on any of her claims as explained in these instructions, and if you find that Excel acted with malice or reckless indifference to Bosley's right to have prompt remedial action taken in response to sexual harassment, or to Bosley's right not to be discriminated against on the basis of sex, then in addition to any damages to which you find Bosley entitled, you may, but are not required to, assess against Excel an additional amount as punitive damages, if you find it is appropriate to punish Excel or to deter Excel and others from similar conduct in the future. Whether to assess punitive damages and what amount of such damages to assess are within your discretion.

INSTRUCTION NO. _____

If you find that Bosley's damages have no monetary value, then you must return a verdict for Bosley in the nominal amount of One Dollar (\$1.00). You must return nominal damages if:

- ! You find in favor of Bosley under her claim for sexual harassment as the result of a hostile work environment, and her damages have no monetary value; or
- ! If you find in favor of Bosley under her claim for sexual discrimination by disparate treatment, and if you answer "no" in response to Instruction No. 7 [Verdict Form Question 2A], and her damages have no monetary value; or
- ! If you find in favor of Bosley under her claim for sexual discrimination by disparate treatment, and if you answer "yes" in response to Instruction No. 7 [Verdict Form Question 2A], and you did not find for Bosley under her sexual harassment claim.

If you find Bosley's damages have monetary value, you should instead award compensatory damages, and not nominal damages.

INSTRUCTION NO. _____

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates should be your item of damage.

You should not interpret the fact that I have given instructions about any party's damages as an indication in any way that I believe that any party should, or should not, win this case.

INSTRUCTION NO. _____

I am giving you a verdict form. Once you have finished responding to the issues in the verdict form, the form should be signed by the person you have selected to serve as presiding juror.

Your response to each of the special interrogatories must represent the considered judgment of each juror. Your answers must be unanimous. When you have agreed upon the verdict and appropriately signed it, tell the Court Security Officer.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of the other jurors or for the mere purpose of returning a verdict.

INSTRUCTION NO. _____

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members to act as presiding juror. The person so elected is responsible for the orderly, proper, and free discussion of the issues by any juror who wishes to express his or her views. He or she will supervise the balloting and sign the form or forms of verdict that are in accord with your decision and will also sign any written inquiries addressed to the Court. Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally fully covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering a jury room, to announce an emphatic opinion in a case or determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans. You are judges -- judges of the facts. Your sole interest is to ascertain the truth.

Dated at _____ a.m./p.m. on this _____ day of May, 1997.

CELESTE F. BREMER
CHIEF U.S. MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

KRISTINE BOSLEY,)	
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Plaintiff,)	CIVIL NO. 4-96-CV-20267
)	
v.)	
)	
EXCEL CORPORATION,)	
)	
a Delaware Corporation,)	
d/b/a MBPXL Corporation,)	
d/b/a Cargill Processed Meat)	
Products,)	SPECIAL INTERROGATORIES
)	
Defendant.)	

The jury makes the following findings on the parties' claims:

INTERROGATORY NO. 1:

1. Has Bosley established her claim for sexual harassment as the result of a hostile work environment, as outlined in Instruction No.3?

ANSWER: _____Yes _____ No

If you answered YES above, answer Question 1A. If you answered NO above, go to Interrogatory No. 2.

1A. Has Bosley established that Excel's failure to take proper corrective action to remedy the sexual harassment by Bosley's co-worker caused Bosley's discharge?

ANSWER: _____Yes _____ No

Go to Interrogatory No. 2.

INTERROGATORY NO. 2:

2. Has Bosley established her claim for sexual discrimination by disparate treatment, as outlined in Instruction No.5?

ANSWER: _____Yes _____ No

If you answered YES above, answer Question 2A. If you answered NO above, go to Interrogatory No. 3.

2A. Has Excel proved by the preponderance of the evidence that Excel would have discharged Bosley regardless of her sex?

ANSWER: _____Yes _____ No

If your answer to Interrogatory No. 1 or 2 is YES, go to Interrogatory No. 3.

If you answered NO to Interrogatory No. 1 and 2, the Presiding Juror should sign the verdict form, and you should not answer any more questions.

INTERROGATORY NO. 3:

Answer Interrogatory No. 3 if, and only if, you answered YES to Interrogatory No. 1 or 2.

3. Damages.

State the amount of damages sustained by Bosley, if any. If Bosley has failed to prove any item of damage, enter "0" for that item.

3A. Compensatory damages.

1. Past emotional distress	\$ _____
2. Future emotional distress	\$ _____
3. Backpay	\$ _____
4. Frontpay	\$ _____
TOTAL	\$ _____

3B. Nominal damages.

Answer Question 3B if, and only if, you awarded no amount of damages in Question 3A.

1. Nominal damages (\$1.00) \$ _____

3C. Punitive damages.

Answer Question 1 below if, and only if, you answered YES to Interrogatory No.1, and awarded some amount of damages in Questions 3A or 3B.

1. Has Bosley established that Excel acted with malice or reckless indifference to her right to have prompt remedial action taken in response to sexual harassment in the work environment?

ANSWER: _____Yes _____ No

If you answered YES to Question 1, please state the amount of punitive damages, if any, that you believe is appropriate for this claim.

\$ _____

Answer Question 2 below if, and only if, you answered YES to Interrogatory No.2, and awarded some amount of damages in Questions 3A or 3B.

2. Has Bosley established that Excel acted with malice or reckless indifference to her right not to be subjected to sexual discrimination through disparate treatment?

ANSWER: _____Yes _____ No

If you answered YES to Question 2, please state the amount of punitive damages, if any, that you believe is appropriate for this claim.

\$ _____

TOTAL PUNITIVE DAMAGES AWARD: \$_____

Presiding Juror*

*Your verdict must be unanimous.

[You are finished answering the Special Interrogatories.]